

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
DECEMBER 4, 2012**

ITEM 7

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION ADOPTING AMENDMENTS TO THE CALIFORNIA CODE OF REGULATIONS, TITLE 23, DIVISION 3, CHAPTER 26 (COMMENCING WITH SECTION 3670) RELATING TO THE WASTEWATER TREATMENT PLANT CLASSIFICATION, OPERATOR CERTIFICATION, AND CONTRACT OPERATOR REGISTRATION PROGRAM

DISCUSSION

Chapter 9 of division 7 of the Water Code designates the State Water Resources Control Board (State Water Board) as responsible for the administration of the Wastewater Treatment Plant (WWTP) Classification and Operator Certification Program. The State Water Board adopted California Code of Regulations, title 23, division 3, chapter 26 (commencing with section 3670) to implement chapter 9 of the Water Code.

Amendments to the Water Code enacted by chapter 422, statutes of 2002, require the State Water Board to adopt regulations prescribing the procedures and requirements for certifying operators at privately owned WWTPs. The proposed amendments to the regulations would prescribe the procedures and requirements for certifying operators at privately owned WWTPs. All operators at privately owned WWTPs will be required to become certified at the Grade I level or higher no later than two years after the effective date of the proposed regulations. In accordance with Water Code section 13627.5, the proposed regulations provide that any operator employed at a privately owned WWTP will receive a minimum of one year of qualifying experience credit upon passing an examination.

Amendments to the Water Code enacted by chapter 422, statutes of 2002, exempt a Class I WWTP from the requirements of chapter 9 of the Water Code and the regulations if the facility could not, due to operator error, violate water quality objectives. The proposed amendments to the regulations would prescribe the procedures and requirements for obtaining an exemption from the operator certification requirements. The fee for an application for an exemption will be \$800 and the fee for renewing an exemption will be \$300.

Administrative civil liability provisions were added to the Water Code by chapter 869, statutes of 2001 and chapter 664, statutes of 2002. The proposed amendments to the regulations would incorporate the administrative civil liability provisions.

The proposed amendments to the regulations would update the appeals and petition processes to be consistent with the State Water Board's other programs and to establish a separate process for requesting reconsideration of a Proposed Disciplinary Action Letter issued by the Director of the Office of Enforcement.

Water Code section 13628 requires the State Water Board to establish a fee schedule to pay for its costs to implement the Operator Certification Program. Water Code section 13627.5, subdivision (b) permits the State Water Board to charge a reasonable fee for processing examination applications and administering applications. The number of applications and the associated costs of the Operator Certification Program have increased significantly since the last fee increase in 2003. After analyzing all of the available data, including an economic impact analysis of the fee increase impact, staff proposes the State Water Board determine that it is necessary to increase operator and operator-in-training (OIT) fees, in order to cover the costs of the Operator Certification Program. The certification, OIT application, and renewal fees, which currently range from \$95 to \$190 depending on the grade level of the operator or OIT, will increase to between \$170 and \$340. The examination application fees, which currently range from \$40 to \$80 depending on the grade level of the examination, will increase to between \$70 and \$140. The examination fees, which currently range from \$40 to \$170 depending on the grade level of the examination, will increase to between \$70 and \$300. Staff also proposes that the State Water Board determine that it is necessary to increase the reinstatement fee, the certificate replacement fee, and the reciprocity fee, which is renamed the examination waiver fee.

Water Code section 13627.3, subdivision (e) requires the State Water Board to establish a fee schedule to pay for its costs to implement the Contract Operator Registration Program. The costs of registering contract operators have increased significantly since the contract operator registration fees were established on August 29, 1994, and the fees have never been increased. After analyzing all of the available data, including an economic impact analysis of the fee increase impact, staff proposes that the State Water Board determine it is necessary to increase the initial registration, annual renewal, and employee registration fee by the contract operator in order to cover the costs of the Contract Operator Registration Program. The contract operator registration fee will increase from \$100 to \$350 and the employee registration fee will increase from \$25 to \$100. Staff also proposes that the State Water Board determine that it is necessary to increase the late fee and the registration replacement fee.

To comply with the direct supervision requirement in existing regulations, a WWTP that wishes to train an OIT must employ both the OIT and a certified operator to directly supervise that OIT. For Class I WWTPs, some of which require only a part-time operator, it may be prohibitively expensive to employ both an OIT and an operator. Further, some small communities, particularly communities that are also rural and/or disadvantaged, have difficulty finding a certified operator. Staff proposes that the State Water Board determine that it is appropriate to establish a provisional operator certificate to assist Class I WWTPs to train and retain qualified operators when the owner has had difficulty, despite due diligence, hiring a certified operator to operate the WWTP. The proposed regulations would prescribe the procedures and requirements for owners of WWTPs to receive approval to use a provisional operator. The fee for a request for approval to use a provisional operator will be \$1,000. The proposed regulations would also prescribe the procedures and requirements for an individual to obtain a provisional operator certificate. The provisional operator certification fee will be equivalent to the certification fee for Grade I OITs and Grade I operators.

Staff proposes that the State Water Board determine that the requirements to obtain an operator certificate by reciprocity in the existing regulations serve to unnecessarily restrict qualified people from being certified by the State Water Board. Several of the existing limitations are no longer necessary because the requirements of other certifying bodies have improved.

The proposed regulations would replace the limited reciprocity provision in existing regulations with an examination waiver that will be available for eligible applicants with current certification from another state, a territory, or an Indian tribe certifying body.

Staff proposes that the State Water Board determine that it is necessary to amend the regulations to clarify ambiguities in the existing regulations, for consistency with chapter 9 of the Water Code and between different provisions in the regulations, and to address previously unforeseen issues.

Although State Water Board staff is proposing not to include continuing education requirements in the proposed regulations, the proposed resolution directs the Division of Financial Assistance to consider proposing continuing education requirements after the adoption of these proposed regulations.

The Operator Certification Advisory Committee met on February 1, 2007, June 7, 2007, June 10, 2008, June 11, 2009, July 21, 2010, November 2, 2010, and August 28, 2012, to review and make recommendations on the proposed regulatory action.

The State Water Board published and distributed a Notice of Proposed Regulatory Action on June 15, 2012. The 45-day public comment period ended on July 30, 2012, and the State Water Board received 38 timely comment letters and one late comment letter.

The State Water Board held a Public Hearing on August 7, 2012, to accept comments on the proposed regulations. This public hearing satisfies the public hearing requirement in the Administrative Procedures Act.

The State Water Board published and distributed a Notice of Modification to Text of Proposed Regulation and the modified text of the proposed regulations in underline and strikeout on October 1, 2012. The 15-day public comment on the proposed modifications ended on October 15, 2012, and the State Water Board received 5 timely comment letters.

POLICY ISSUE

Should the State Water Board adopt the proposed resolution:

1. Approving the proposed regulations, and authorizing the Executive Director to transmit the regulations to the Office of Administrative Law (OAL);
2. Directing the Division of Financial Assistance to analyze the costs of the Operator Certification and Contract Operator Registration Programs to evaluate whether the fee schedules for operator certification and contract operator registration should be modified in order to cover the cost of the program; and
3. Directing the Division of Financial Assistance to consider proposing continuing education requirements after the adoption of these proposed regulations?

FISCAL IMPACT

The proposed regulations require approximately \$380,000 in additional expenditures to: 1) develop and implement the new provisional operator certificate; 2) bring approximately 434 privately owned WWTPs into the Operator Certification Program, including plant classification, registering contract operators, processing certificate applications and give examinations to the additional 468 certified operators, certified provisional operators, or certified OITs; and 3) maintain the current workload of certifying operators and registering contract operators at publicly owned WWTPs.

REGIONAL BOARD IMPACT

There will be a minor absorbable increase in workload as a result of coordinating with the State Water Board on applications for WWTP Class I exemptions and the classification of approximately 434 privately owned WWTPs.

STAFF RECOMMENDATION

Staff recommends that the State Water Board adopt the proposed resolution:

1. Approving the proposed regulations, and authorizing the Executive Director to transmit the regulations to OAL;
2. Directing the Division of Financial Assistance to analyze the costs of the Operator Certification and Contract Operator Registration Programs to evaluate whether the fee schedules for operator certification and contract operator registration should be modified in order to cover the cost of the program; and
3. Directing the Division of Financial Assistance to propose continuing education requirements after the adoption of these proposed regulations.

State Water Board action on this item will assist the Water Boards in reaching Goals 4 and 6 of the Strategic Plan Update: 2008-2012 to narrative of goal. In particular, approval of these items will assist in fulfilling the State Water Boards' environmental priorities, which are: Protect and restore surface water quality; Protect and restore groundwater quality; Promote sustainable local water supplies; and Water quality planning.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2012-

ADOPTING AMENDMENTS TO THE CALIFORNIA CODE OF REGULATIONS, TITLE 23, DIVISION 3, CHAPTER 26 (COMMENCING WITH SECTION 3670) RELATING TO THE WASTEWATER TREATMENT PLANT CLASSIFICATION, OPERATOR CERTIFICATION, AND CONTRACT OPERATOR REGISTRATION PROGRAM

WHEREAS:

1. Under chapter 9 of division 7 of the Water Code, the State Water Resources Control Board (State Water Board) is responsible for the administration of the Wastewater Treatment Plant (WWTP) Classification and Operator Certification Program.
2. The State Water Board adopted California Code of Regulations, title 23, division 3, chapter 26 (commencing with section 3670) to implement chapter 9 of the Water Code.
3. Amendments to the Water Code enacted by chapter 422, statutes of 2002, require the State Water Board to adopt regulations prescribing the procedures and requirements for certifying operators at privately-owned WWTPs.
4. State Water Board staff has proposed amendments to the regulations to prescribe the procedures and requirements for certifying operators at privately owned WWTPs. All operators at privately-owned WWTPs will be required to become certified at the Grade I level or higher no later than two years after the effective date of the proposed regulations. In accordance with Water Code, section 13627.5, the proposed regulations provide that any operator employed at a privately-owned WWTP will receive a minimum of one year of qualifying experience credit upon passing an examination.
5. Amendments to the Water Code enacted by chapter 422, statutes of 2002, exempt a Class I WWTP from the requirements of chapter 9 of the Water Code and the regulations if the facility could not, due to operator error, violate water quality objectives.
6. State Water Board staff has proposed amendments to the regulations to prescribe the procedures and requirements for obtaining an exemption from the operator certification requirements. The fee for an application for an exemption will be \$800 and the fee for renewing an exemption will be \$300.
7. Administrative civil liability provisions were added to the Water Code by chapter 869, statutes of 2001 and chapter 664, statutes of 2002.
8. State Water Board staff has proposed amendments to the regulations to incorporate the administrative civil liability provisions.
9. State Water Board staff has proposed amendments to the regulations to update the appeals and petition processes to be consistent with the State Water Board's other programs and to establish a separate process for requesting reconsideration of a Proposed Disciplinary Action Letter issued by the Director of the Office of Enforcement.

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10. Water Code section 13628 requires the State Water Board to establish a fee schedule to pay for its costs to implement the Operator Certification Program and Water Code section 13627.5, subdivision (b) permits the State Water Board to charge a reasonable fee for processing examination applications and administering applications.
11. The number of applications and the associated costs of the Operator Certification Program have increased significantly since the last fee increase in 2003.
12. After analyzing all of the available data, including an economic impact analysis of the fee increase impact, the State Water Board has determined that it is necessary to increase operator and operator-in-training (OIT) fees, in order to cover the costs of the Operator Certification Program. The certification, OIT application, and renewal fees, which currently range from \$95 to \$190 depending on the grade level of the operator or OIT, will increase to between \$170 and \$340. The examination application fees, which currently range from \$40 to \$80 depending on the grade level of the examination, will increase to between \$70 and \$140. The examination fees, which currently range from \$40 to \$170 depending on the grade level of the examination, will increase to between \$70 and \$300. The State Water Board also has determined that it is necessary to increase the reinstatement fee, the certificate replacement fee, and the reciprocity fee, which is renamed the examination waiver fee.
13. Water Code section 13627.3, subdivision (e) requires the State Water Board to establish a fee schedule to pay for its costs to implement the Contract Operator Registration Program.
14. The costs of registering contract operators have increased significantly since the contract operator registration fees were established on August 29, 1994, and the fees have never been increased.
15. After analyzing all of the available data, including an economic impact analysis of the fee increase impact, the State Water Board has determined it is necessary to increase the initial registration, annual renewal, and employee registration fee by the contract operator in order to cover the costs of the Contract Operator Registration Program. The contract operator registration fee will increase from \$100 to \$350 and the employee registration fee will increase from \$25 to \$100. The State Water Board also has determined that it is necessary to increase the late fee and the registration replacement fee.
16. To comply with the direct supervision requirement in existing regulations, a WWTP that wishes to train an OIT must employ both the OIT and a certified operator to directly supervise that OIT.
17. For Class I WWTPs, some of which require only a part-time operator, it may be prohibitively expensive to employ both an OIT and an operator. Further, some small communities, particularly communities that are also rural and/or disadvantaged, have difficulty finding a certified operator.
18. The State Water Board has determined that it is appropriate to establish a provisional operator certificate to assist Class I wastewater treatment plants to train and retain qualified operators when the owner has had difficulty, despite due diligence, hiring a certified operator to operate the wastewater treatment plant.

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19. State Water Board staff has proposed regulations prescribing the procedures and requirements for owners of wastewater treatment plants to receive approval to use a provisional operator. The fee for a request for approval to use a provisional operator will be \$1,000.
20. State Water Board staff has proposed regulations prescribing the procedures and requirements for an individual to obtain a provisional operator certificate. The provisional operator certification fee will be equivalent to the certification fee for Grade I OITs and Grade I operators.
21. The State Water Board has determined that the requirements to obtain an operator certificate by reciprocity in the existing regulations serve to unnecessarily restrict qualified people from being certified by the State Water Board. Several of the existing limitations are no longer necessary because the requirements of other certifying bodies have improved.
22. State Water Board staff has proposed amendments to the regulations to replace the limited reciprocity provision in existing regulations with an examination waiver that will be available for eligible applicants with current certification from another state, a territory, or an Indian tribe certifying body.
23. The State Water Board has determined that it is necessary to amend the regulations to clarify ambiguities in the existing regulations, for consistency with chapter 9 of the Water Code and between different provisions in the regulations, and to address issues previously unforeseen by the State Water Board.
24. The State Water Board's Operator Certification Advisory Committee participated in the development of the amended regulations.
25. The State Water Board published and distributed a Notice of Proposed Regulatory Action and text of the proposed regulations on June 15, 2012. The 45-day public comment period ended on July 30, 2012, and the State Water Board received 38 timely comment letters. Responses to all timely comments and one late comment received on the proposed regulations are contained in the Final Statement of Reasons.
26. On August 7, 2012, the State Water Board held a public hearing on the proposed regulations.
27. The State Water Board distributed a Notice of Modification to Text of Proposed Regulation and the modified text of the proposed regulations in underline and strikeout on October 1, 2012. The 15-day public comment period on the proposed modifications ended on October 15, 2012, and the State Water Board received five written comment letters. Responses to all timely comments received pertaining to the proposed modifications are contained in the Final Statement of Reasons.

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THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Adopts the proposed amendment of California Code of Regulations, title 23, division 3, chapter 26 (commencing with section 3670) ([Attachment](#)) and authorizes the Executive Director to submit the regulation to the Office of Administrative Law for filing with the Secretary of State, and to make any non-substantive revisions to the regulation to address any concerns of the Office of Administrative Law.
2. Directs the Division of Financial Assistance to analyze the costs of the Operator Certification and Contract Operator Registration Programs to evaluate whether the fee schedules for operator certification and contract operator registration should be modified in order to cover the cost of the program.
3. Directs the Division of Financial Assistance to consider proposing continuing education requirements after the adoption of these proposed regulations.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on December 4, 2012.

Jeanine Townsend
Clerk to the Board